

AMENDED IN SENATE JUNE 19, 2017

AMENDED IN ASSEMBLY APRIL 27, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 375

Introduced by Assembly Member Chau

February 9, 2017

~~An act to repeal Section 20601 of the Business and Professions Code, relating to video arcades. An act to add Chapter 36 (commencing with Section 22949.1) to Division 8 of the Business and Professions Code, relating to customer privacy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 375, as amended, Chau. ~~Video arcades. Internet service providers:~~
customer privacy.

Existing law requires an operator of a commercial Internet Web site or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit the commercial Internet Web site or online service to conspicuously post, or make available, its privacy policy, as specified. Under existing law, an operator violates this provision if the operator fails to post its policy within 30 days after being notified of noncompliance. Existing law requires, among other things, that the privacy policy identify the categories of personally identifiable information that the operator collects about individual consumers and the categories of 3rd-party persons or entities with whom the operator may share that information.

This bill would enact the California Broadband Internet Privacy Act. The bill would prohibit an Internet service provider from using,

disclosing, selling, or permitting access to customer personal information, except as provided in that act. The bill would authorize a customer to give prior opt-in consent, which may be revoked by the customer at any time, to an Internet service provider to use, disclose, sell, or permit access to that customer's personal information. The bill would prohibit an Internet service provider from refusing to serve or to limit service to a customer who does not provide consent or charging a customer a penalty or offering a customer a discount or another benefit based on the customer's decision to provide consent.

The bill, however, would authorize an Internet service provider to use, disclose, or permit access to customer personal information, without customer approval, for specified limited purposes, unless otherwise prohibited by state law. These purposes would include to comply with other laws or an administrative or court order, to bill and collect for Internet access services, and to provide location information concerning a customer. The bill would require an Internet service provider to maintain reasonable security procedures to protect customers' personal information. The bill would specify that its requirements apply to Internet service providers operating within California when providing Internet access services to customers who are residents of and physically located in California.

~~Existing law requires a video arcade, as defined, to post a sign notifying consumers that an industry-created rating system is available to aid in the selection of a game. Existing law also requires a video arcade to make a brochure available upon request to consumers explaining this system.~~

~~This bill would repeal the above-described brochure requirement.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 **SECTION 1.** Chapter 36 (commencing with Section 22949.1)
- 2 *is added to Division 8 of the Business and Professions Code, to*
- 3 *read:*

1
2 *CHAPTER 36. CALIFORNIA BROADBAND INTERNET PRIVACY*
3 *ACT*
4

5 22949.1. *This chapter shall be known, and may be cited, as*
6 *the California Broadband Internet Privacy Act.*

7 22949.2. *It is the intent of the Legislature in enacting this*
8 *chapter to give consumers greater control over their personal*
9 *information when accessing the Internet through an Internet service*
10 *provider and thereby better protect their own privacy and*
11 *autonomy. It is also the intent of the Legislature that the consumer*
12 *protections set forth in this chapter be interpreted broadly and*
13 *any exceptions interpreted narrowly in order to maximize*
14 *individual privacy and autonomy.*

15 22949.3. *For purposes of this chapter, the following terms*
16 *have the following meanings:*

17 (a) *“Aggregate customer information” means collective data*
18 *that relates to a group or category of customers, from which*
19 *individual customer identities and characteristics have been*
20 *removed, that is not linked or reasonably linkable to any individual*
21 *person, household, or device. “Aggregate customer information”*
22 *does not mean one or more individual customer records that have*
23 *been deidentified.*

24 (b) *“Customer” means a current or former subscriber to the*
25 *Internet access service, or an applicant for Internet access service.*

26 (c) *“Customer personal information” means information*
27 *collected from or about an individual customer or user of the*
28 *customer’s subscription that is made available to the Internet*
29 *service provider by a customer or user of the customer’s*
30 *subscription solely by virtue of the provider-customer relationship,*
31 *including:*

32 (1) *Name and billing information.*

33 (2) *Government-issued identifiers, including social security*
34 *number.*

35 (3) *Information that would permit the physical or online*
36 *contacting of an individual, such as physical address, email*
37 *address, phone number, or IP address.*

38 (4) *Demographic information, such as date of birth, age, gender,*
39 *race, ethnicity, nationality, religion, or sexual orientation.*

40 (5) *Financial information.*

1 (6) *Health information.*

2 (7) *Information pertaining to minors.*

3 (8) *Geolocation information.*

4 (9) *Information from the use of the service, such as Web*
5 *browsing history, application usage history, content of*
6 *communications, and origin and destination Internet Protocol (IP)*
7 *addresses of all traffic.*

8 (10) *Device identifiers, such as media access control (MAC)*
9 *address or Internet mobile equipment identity (IMEI).*

10 (11) *Information concerning a customer or user of the*
11 *customer's subscription that is collected or made available and*
12 *is maintained in personally identifiable form.*

13 (d) *"Internet access service" means a mass-market retail service*
14 *by wire or radio that provides the capability to transmit data to*
15 *and receive data from all or substantially all Internet endpoints,*
16 *including any capabilities that are incidental to and enable the*
17 *operation of the communications service, but excluding dial-up*
18 *Internet access service. "Internet access service" also encompasses*
19 *any service that the Federal Communications Commission or the*
20 *Public Utilities Commission finds to be providing a functional*
21 *equivalent to the service described in this subdivision.*

22 (e) *"Internet service provider" means a person or entity*
23 *engaged in the provision of Internet access service, but only to the*
24 *extent that the person or entity is providing Internet access service.*

25 22949.4. (a) *An Internet service provider shall not use,*
26 *disclose, sell, or permit access to customer personal information,*
27 *except as provided in this chapter.*

28 (b) (1) *An Internet service provider may use, disclose, sell, or*
29 *permit access to customer personal information if the customer*
30 *gives the Internet service provider prior opt-in consent, which may*
31 *be revoked by the customer at any time. The mechanism for*
32 *requesting and revoking consent under this subdivision shall be*
33 *clear and conspicuous, as defined in subdivision (c) of Section*
34 *17601, not misleading, in the language primarily used to conduct*
35 *business with the customer, and made available to the customer*
36 *at no additional cost. The mechanism shall also be persistently*
37 *available on or through the Internet service provider's Internet*
38 *Web site, or mobile application if it provides one for account*
39 *management purposes. If the Internet service provider does not*
40 *have an Internet Web site, it shall provide a persistently available*

1 *mechanism by another means, such as a toll-free telephone number.*
2 *The customer's grant, denial, or withdrawal of consent shall be*
3 *given effect promptly and remain in effect until the customer*
4 *revokes or limits the grant, denial, or withdrawal of consent.*

5 *(2) The request for consent shall disclose to the customer all of*
6 *the following:*

7 *(A) The types of customer personal information for which the*
8 *Internet service provider is seeking customer approval to use,*
9 *disclose, sell, or permit access.*

10 *(B) The purposes for which the customer personal information*
11 *will be used.*

12 *(C) The categories of entities to which the Internet service*
13 *provider intends to disclose, sell, or permit access to the customer*
14 *personal information.*

15 *(c) An Internet service provider shall not do either of the*
16 *following:*

17 *(1) Refuse to serve a customer, or in any way limit services to*
18 *a customer, who does not provide consent under subdivision (b).*

19 *(2) Charge a customer a penalty, or penalize a customer in any*
20 *way, or offer a customer a discount or another benefit based on*
21 *the customer's decision to provide or not provide consent under*
22 *subdivision (b).*

23 *(d) An Internet service provider shall disclose the customer*
24 *personal information of the customer upon affirmative written*
25 *request by the customer, to any person designated by the customer.*

26 *22949.5. (a) An Internet service provider may use, disclose,*
27 *or permit access to customer personal information without*
28 *customer consent, but only to the extent necessary to achieve the*
29 *stated purpose, in the following circumstances, unless otherwise*
30 *prohibited by state law:*

31 *(1) To provide the Internet access service from which the*
32 *information is derived, or services necessary to the provision of*
33 *that service.*

34 *(2) To comply with legal process or other laws, court orders,*
35 *or administrative orders.*

36 *(3) To initiate, render, bill for, and collect for Internet access*
37 *service.*

38 *(4) To protect the rights or property of the Internet service*
39 *provider, or to protect customers of those services and other*

1 carriers from fraudulent, abusive, or unlawful use of, or
2 subscription to, those services.

3 (5) To provide location information concerning the customer
4 as follows:

5 (A) To a public safety answering point, emergency medical
6 service provider, or emergency dispatch provider, public safety,
7 fire service, or law enforcement official, or hospital emergency or
8 trauma care facility, in order to respond to the customer's request
9 for emergency services.

10 (B) To inform the customer's legal guardian, members of the
11 customer's family, or a person reasonably believed by the Internet
12 service provider, to be a close personal friend of the customer, of
13 the customer's location in an emergency situation that involves
14 the risk of death or life-threatening harm.

15 (C) To providers of information or database management
16 services solely for purposes of assisting in the delivery of
17 emergency services in response to an emergency.

18 (b) Nothing in this chapter shall restrict an Internet service
19 provider from generating an aggregate customer information
20 dataset using customer personal information, or using, disclosing,
21 selling, or permitting access to the aggregate customer information
22 dataset it generated.

23 (c) Unless otherwise prohibited by state law, an Internet service
24 provider may use, disclose, or permit access to customer personal
25 information to advertise or market the provider's
26 communications-related services to the customer, provided that
27 the customer may opt out of that use, disclosure, or access at any
28 time, and the customer is notified of the right to opt out in a manner
29 that is clear and conspicuous, as defined in subdivision (c) of
30 Section 17601, not misleading, in the language primarily used to
31 conduct business with the consumer, persistently available, and
32 made available to the customer at no additional cost.

33 22949.6. (a) An Internet service provider shall implement and
34 maintain reasonable security procedures and practices appropriate
35 to the nature of the information to protect customer personal
36 information from unauthorized use, disclosure, access, destruction,
37 or modification.

38 (b) An Internet service provider may employ any lawful security
39 measures that allow it to comply with the requirements set forth
40 in this section.

1 (c) *An Internet service provider shall not retain a customer's*
2 *information for longer than is reasonably necessary to accomplish*
3 *the purposes for which the information was collected, unless the*
4 *information is aggregate customer information, or as otherwise*
5 *required by this chapter.*

6 22949.7. *The requirements of this chapter shall apply to*
7 *Internet service providers operating within California when*
8 *providing Internet access service to their customers who are*
9 *residents of and physically located in California. Any waiver by*
10 *the customer of the provisions of this chapter shall be deemed*
11 *contrary to public policy and shall be void and unenforceable.*

12 22949.8. *The provisions of this act are severable. If any*
13 *provision of this act or its application is held invalid, that invalidity*
14 *shall not affect other provisions or applications that can be given*
15 *effect without the invalid provision or application.*

16 *It is the intent of the Legislature that this chapter would have*
17 *been adopted regardless of whether an invalid provision had not*
18 *been included or an invalid application had not been made*

19 22949.9. *California adopts this chapter pursuant to all inherent*
20 *state authority under the Tenth Amendment of the United States*
21 *Constitution and all relevant authority granted and reserved to*
22 *the states by Title 47 of the United States Code, including the*
23 *authority to impose requirements necessary to protect public safety*
24 *and welfare, safeguard the rights of consumers, manage public*
25 *rights-of-way, and regulate franchises. California further adopts*
26 *this law pursuant to the inalienable right of privacy granted under*
27 *the authority of Article I, Section 1 of the California Constitution.*

28 ~~SECTION 1. Section 20601 of the Business and Professions~~
29 ~~Code is repealed.~~